CCRB INVESTIGATIVE RECOMMENDATION

CCRB INVESTIGATIVE RECOMMENDATION									
Investigator:		Team:	CCRB Case #:	Ø	Force	$\overline{\mathbf{A}}$	Discourt.		U.S.
Stephen DiFiore		Squad #5	201910509	Ø	Abuse	$\overline{\mathbf{V}}$	O.L.		Injury
Incident Date(s)		Location of Incident:	1	F	Precinct:	18	Mo. SOL	I	EO SOL
Thursday, 12/05/2019 11:08 PM		248 East 119th Street			25	6	5/5/2021	1.	/20/2022
Date/Time CV Reported		CV Reported At:	How CV Reported:		Date/Time	Rece	eived at CCI	RB	
Fri, 12/06/2019 9:59 PM		CCRB	Call Processing System		Fri, 12/06/	2019	9:59 PM		
Complainant/Victim	Туре	Home Addro	ess						
Subject Officer(s)	Shield	TaxID	Command						
1. POM Kevin Weber	26421	948439	025 PCT						
2. POF Amanda Proietto	24791	962702	025 PCT						
3. POM Robert Kselman	25091	950708	025 PCT						
4. POM Jason Brochhausen	18783	948695	025 PCT						
5. An officer			025 PCT						
6. Officers			025 PCT						
Officer(s)	Allegatio)n			Inve	stiga	ator Recon	ıme	ndation
A. An officer	Discourte	esy: An officer spoke di	scourteously to (8 87(2)						
B.POF Amanda Proietto	Off. Language: Police Officer Amanda Proietto made remarks to \$87(2)(b) based upon the gender of \$87(2)								
C.POF Amanda Proietto	Abuse: Police Officer Amanda Proietto forcibly removed to the hospital.								
D.POM Kevin Weber	Abuse: Police Officer Kevin Weber forcibly removed to the hospital.								
E.POM Robert Kselman	Abuse: Police Officer Robert Kselman forcibly removed to the hospital.								
F.POM Jason Brochhausen	Abuse: Police Officer Jason Brochhausen forcibly removed to the hospital.								
G.POF Amanda Proietto	Force: Police Officer Amanda Proietto used physical force against § 87(2)(b)								
H.POF Amanda Proietto	Force: Police Officer Amanda Proietto hit § 87(2)(b) against the ground.								
I. Officers	Force: Officers used physical force against [8] [8] [8] [8] [8] [8] [8] [8] [8] [8]								
J.POF Amanda Proietto	Force: Police Officer Amanda Proietto restricted s breathing.								
K.POM Kevin Weber	Force: Police Officer Kevin Weber restricted streathing.								
L.POF Amanda Proietto	Abuse: P § 87(2)(b)	olice Officer Amanda F	Proietto threatened to	arre	est				
M.POF Amanda Proietto		esy: Police Officer Ama eously to § 87(2)(b)	anda Proietto spoke						

Officer(s)	Allegation	Investigator Recommendation
N.POF Amanda Proietto	Discourtesy: Police Officer Amanda Proietto spoke discourteously to \$87(2)(b)	
O.POF Amanda Proietto	Force: Police Officer Amanda Proietto used physical force against §87(2)(b)	
P.POF Amanda Proietto	Discourtesy: Police Officer Amanda Proietto spoke discourteously to §87(2)(b)	
Q.POF Amanda Proietto	Abuse: Police Officer Amanda Proietto threatened with the use of force.	

Case Summary

On December 6, 2019, \$87(2)(6) filed this complaint by leaving a message on the
CCRB call processing system.
On December 5, 2019, at approximately 11:08 p.m., 887(2)(b) had an argument
with an employee of a deli at 248 East 119th Street in Manhattan. The staff at the deli called 911 and
requested police assistance because §87(2)(b) refused to leave. Police Officer Robert Kselman,
Police Officer Jason Brochhausen, Police Officer Amanda Proietto, and Police Officer Kevin
Weber, all assigned to the 25 th Precinct at the time, responded to the scene. PO Kselman has since
been transferred to the Firearms and Tactics Section.
One of the officers allegedly told [887(2)(b)] to "get the fuck out," (Allegation A:
Discourtesy, \$87(2)(9) and PO Proietto allegedly called \$87(2)(6) a "bitch"
(Allegation B: Offensive Language, \$87(2)(9) was intoxicated and refused to
leave the scene, and the officers decided to place her in custody to await an ambulance so she could
be forcibly removed to a hospital (Allegations C-F: Abuse of Authority, § 87(2)(9)
PO Proietto allegedly brought \$87(2)(b) to the ground and then allegedly struck \$800
s face or head against the ground (Allegations G-H: Force, \$87(2)(9) Officers
allegedly struck \$87(2)(b) while she was on the ground (Allegation I: Force, \$87(2)(g) PO
Proietto allegedly restricted \$87(2)(b) s breathing by putting a hand over her mouth, and PO
Weber allegedly restricted her breathing by sitting on her stomach (Allegations J-K: Force,
PO Proietto also allegedly told \$87(2)(b) "You're going to get arrested if you don't
shut the fuck up" (Allegation L: Abuse of Authority, \$87(2)(9) Allegation M:
Discourtesy, § 87(2)(9)
After she was handcuffed, \$87(2)(6) told PO Proietto that she was "ugly," to which PO
Proietto responded, "So are you" (Allegation N: Discourtesy, \$87(2)(9)
continued to scream while in a kneeling position, and allegedly grabbed PO Proietto's leg. PO
Proietto responded by shoving \$87(2)(b) back down to a prone position (Allegation O: Force,
PO Proietto also yelled at \$87(2)(b) "Fucking grab me one more time and see
what happens!" (Allegation P: Discourtesy, \$87(2)(9) Allegation Q: Abuse of Authority,
§ 87(2)(g)
An ambulance transported \$87(2)(b) to \$87(2)(b) , where she was diagnosed
with acute psychosis and was forcibly administered a sedative. She was not arrested or issued any
summonses.
The investigation obtained a brief cellphone video which §87(2)(b) filmed inside the deli
prior to officers' arrival (BR01). The investigation also obtained BWC footage from all four
officers (BR02-05, summarized at BR06). §87(2)(9)
§ 87(2)(g)
Findings and Recommendations
Allegation (A) Discourtesy: An officer spoke discourteously to §87(2)(b)
Allegation (B) Offensive Language: Police Officer Amanda Proietto made remarks to \$87(2)
based upon the gender of \$87(2)(b)

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briefly described the incident when she filed the complaint (BR07). She later
provided an initial phone statement (BR08), then a sworn interview statement in person at the CCRB
(BR09), and finally additional information by phone afterward (BR10). §87(2)(9)
When she filed the complaint, §87(2)(b) did not recount these specific verbal allegations.
She said only that the officers attacked her when she was still inside the deli. In her phone statement,
however, she recounted that she left the deli to find PO Proietto and five or six additional officers
outside on the sidewalk. It should be noted that there were never more than four officers on scene.
PO Proietto told her, "Get the fuck out of here," and then called her a "bitch." In her in-person interview, \$87(2)(b) explained that she had an argument with an employee
at the deli regarding whether she could purchase individual cigarettes. She described the argument as
brief and not heated, and she had no knowledge of anyone calling 911. §87(2)(0) admitted that she
had two drinks about 45-60 minutes before the incident, but she denied that she was intoxicated at
the time of the incident. § 87(2)(b) again recounted that she did not meet the officers until she left
the deli, and she again recalled there being at least six officers present. In the in-person interview,
was certain that PO Proietto called her a "bitch," but she could not say which officer told
her to "get the fuck out of here." PO Kselman and PO Brochhausen both recounted that they were assigned to respond to the
911 call, which was classified as a "dispute" (BR11; BR12). They arrived to find employees of the
deli standing outside. The employees told the officers that \$87(2)(5) was intoxicated and refusing
to leave the store. PO Kselman and PO Brochhausen entered the deli and eventually convinced
\$87(2)(b) to leave. PO Proietto and PO Weber recounted that they arrived once \$87(2)(b) PO
Kselman, and PO Brochhausen were already outside the deli (BR13; BR14). PO Proietto testified
that she did not recall any of the officers making the alleged profane statements to \$87(2)(b) PO
Kselman and PO Weber similarly denied that any of the officers made the remarks. The investigation did not solicit direct testimony from PO Brochhausen regarding these specific remarks.
§ 87(2)(g)
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§ 87(2)(g)
5.0. (2)(3)
Allegation (C) Abuse of Authority: Police Officer Amanda Proietto forcibly removed [87/2]
to the hospital.
Allegation (D) Abuse of Authority: Police Officer Kevin Weber forcibly removed \$87(2)(b)
to the hospital.
Allegation (E) Abuse of Authority: Police Officer Robert Kselman forcibly removed 887(2)
to the hospital.
Allegation (F) Abuse of Authority: Police Officer Jason Brochhausen forcibly removed [87/2]
to the hospital.

As noted above, \$87(2)(6) admitted to having two drinks within an hour before the incident, but she denied that she was intoxicated at the time of the incident. However, the cellphone video she provided to the investigation, which depicts a portion of her dispute in the deli prior to the officers' arrival, shows that her speech was noticeably slurred at the time (BR01). The footage shows her apparently yelling at an employee behind the counter regarding the number of years that she has been frequenting the deli. The employee keeps his back turned and ignores her throughout. In her various statements to the CCRB, \$87(2)(6) generally recounted that officers began using force against her almost immediately after meeting her outside the deli. \$897(2)(6) s medical records note that she was extremely agitated upon arrival at the hospital and remained so despite attempts to calm her (see Privileged Records). She screamed illogically, made broad accusations of racism against hospital staff, threw herself to the floor and against a door, climbed furniture, threatened staff, kicked, and spit. Security staff eventually had to restrain her, and medical staff injected her with a sedative. She initially denied having consumed any alcohol, but later admitted to having three drinks and using marijuana.
Psychiatric staff
at the hospital diagnosed her with acute psychosis, and they learned from her boyfriend that she
recurrently had negative reactions to drinking alcohol.
All four officers quickly concluded during the incident that §87(2)(b) was intoxicated—
they all testified that they smelled alcohol on her breath and that she was slurring her words, and all
but one testified that she walked unsteadily or had difficulty balancing. They also referenced her
belligerent and irrational behavior. However, the officers did not immediately decide to forcibly
remove \$87(2)(b) to the hospital simply because she appeared intoxicated. The officers consistently recounted that they repeatedly told \$87(2)(b) to leave the area and go home,
especially as she had told them that she lived nearby. However, she refused to leave and insisted
that she would go back into the deli once the officers left the scene, so the officers eventually
decided that she needed medical attention. The officers also all recounted that \$87(2)(6)
deliberately threw herself to the ground when they began trying to handcuff her.
As noted above, this initial portion of the incident was not captured on BWC footage. BWC
footage does show officers telling \$87(2)(b) after she was cuffed, that she was being taken to the
hospital because she was intoxicated, refused to leave, and threw herself to the ground.
§ 87(2)(g)
Detroit Child Dressedore 221 12 states that officers have an abligation to take assume into
<u>Patrol Guide Procedure 221-13</u> states that officers have an obligation to take someone into protective custody when the person appears to be mentally ill or temporarily deranged and is likely
to cause harm to themselves or others (BR15).
§ 87(2)(g)
§ 87(2)(g)
Allegation (G) Force: Police Officer Amanda Proietto used physical force against [87(2)]
Anegation (G) Force, I once Officer Amanda i forctio used physical force against sole
Allegation (H) Force: Police Officer Amanda Proietto hit §87(2)(b) against the ground.
Allegation (I) Force: Officers used physical force against § 87(2)(b)

When she filed the complaint, \$87(2)(b) reported merely that officers attacked her and that one officer "banged" her head. In her initial phone statement, she recounted that PO Projetto grabbed her and brought her to the ground almost immediately after meeting her outside the deli. PO Projetto banged \$87(2)(b) s head against the ground, while other unspecified officers punched her and spit on her. She could not see specifically which officers were punching her because there were so many officers on scene. In her in-person interview, \$87(2)(6) PO Projetto struck her face against the ground multiple times. She repeated that other officers struck her during this time but did not specify which officers did so or how they struck her. She did not repeat the allegation that officers spit on her. In a later follow-up call, \$87(2)(b) specified that PO Proietto grabbed the hood of her coat to slam her face into the sidewalk. When she filed the complaint, she reported that she sustained a swollen face, a mark under her eye, bruises on her face, scratches on her wrist, scrapes on her legs, sore knees, and chest pain. At her in-person interview, she reported only that she had a swollen eye and facial redness, and she displayed a small bruise on her wrist. s medical file from her hospital admission immediately after the incident contains no record of her complaining that officers used force against her, no record of her complaining of any physical injuries, and no record of medical staff observing any visible injuries. The records also note that she threw herself to the ground multiple times at the hospital. As previously noted, the officers recounted that § 87(2)(b) threw herself to the ground when they began trying to handcuff her. PO Proietto specifically denied that she struck \$87(2)(b) against the ground, punched her, or kicked her, and she denied that any other officer did so. She could not recall if § 87(2)(b) resisted being handcuffed or if officers had to use physical force to cuff her. PO Weber also specifically denied that officers struck \$87(2)(b) or struck her head against the ground. He recalled that \$87(2)(b) flailed her arms and kicked her legs. PO Kselman and PO Brochhausen did not recount officers striking \$87(2)(b) on the ground, but neither provided direct testimony specifically with regard to these allegations. As previously noted, the BWC footage does not begin until after § 87(2)(b) The BWC footage does not show any visible injuries on \$87(2)(b) s face. The BWC footage also shows that §87(2)(b) repeatedly spoke about suing the officers. § 87(2)(g) § 87(2)(g) Allegation (J) Force: Police Officer Amanda Proietto restricted §87(2)(b) s breathing. Allegation (K) Force: Police Officer Kevin Weber restricted 887(2)(b) s breathing. Allegation (L) Abuse of Authority: Police Officer Amanda Proietto threatened to arrest § 87(2) Allegation (M) Discourtesy: Police Officer Amanda Proietto spoke discourteously to \$37(2)

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did not mention her breathing being restricted when she filed the complaint. She

mentioned that PO Proietto put a knee on her chest, but she never repeated this allegation in any of her subsequent statements.

In her initial phone statement, \$87(2)(6) recounted that she was screaming on the ground about officers using force against her, and PO Proietto put her hand over her mouth such that she had trouble breathing. In this statement, \$87(2)(6) strongly implied that PO Proietto put a hand over her mouth *after* the officers had restrained her and while they were simply waiting for the ambulance to arrive. She did not mention any officer sitting on her. In her in-person statement, however, \$12,25 changed her narrative such that PO Proietto put a hand over her mouth *before* the officers handcuffed her, in the same physical struggle when the officers allegedly struck her and struck her head against the ground. She recounted that she was screaming that she could not breathe, and PO Proietto placed her hand over her mouth and said, "You're going to get arrested if you don't shut the fuck up."

Her in-person statement was the first in which stricted alleged that an officer restricted her breathing by sitting on her. She recounted merely that PO Weber sat on her and restricted her breathing *before* officers cuffed her, during the initial physical struggle. In a later follow-up statement, secretary specified that she was lying on her back on the ground and that PO Weber sat on her stomach until the ambulance arrived.

s medical files contain no record of her complaining that officers restricted her breathing.

As previously noted, the BWC footage provides an uninterrupted depiction of the incident beginning after the officers handcuffed \$87(2)(b) and continuing until the time she entered the ambulance. It does not begin until after she was handcuffed. The footage does not show any officer putting a hand over \$87(2)(b) s mouth or sitting on her chest, stomach, or back. The footage also does not show PO Proietto, or any officer, making the alleged profane remark or threatening to arrest \$87(2)(b) The footage does show \$87(2)(b) screaming that she could not breathe at one point (see approximately 03:50 in BR04), but no officer is covering her mouth or sitting on her at that time.

PO Proietto denied that she ever put her hand over \$\frac{\$\frac{37(2)(0)}{2}}{2}\$ s mouth, denied making the alleged remark, and denied threatening to arrest \$\frac{37(2)(0)}{2}\$. PO Weber denied that he ever sat or knelt upon \$\frac{57(2)(0)}{2}\$ s chest or stomach. He recounted that, once \$\frac{57(2)(0)}{2}\$ was handcuffed and while they waited for the ambulance to arrive, \$\frac{57(2)(0)}{2}\$ began kicking her legs. PO Weber responded by holding her feet together, and eventually he knelt on her legs to prevent her from moving.

§ 87(2)(g)			
§ 87(2)(g)			
§ 87(2)(g)			
 § 87(2)(g)			

Allegation (N) Discourtesy: Police Officer Amanda Proietto spoke discourteously to [887(2)]

At approximately 01:42 in PO Weber's BWC footage (BR04), §37(2)(b) who is being held cuffed and on the ground in a sitting or kneeling position by PO Projetto and PO Kselman, tells PO Proietto, "Stop touching me you dirty bitch. You're ugly." PO Proeitto laughs and responds, "So are you." did not recount this allegation in any of her statements to the CCRB. At her interview, PO Proietto did not initially recall this exchange taking place, but she remembered it after being presented with the BWC footage. PO Projetto said that her comment was a "heat of the moment" decision made in response to \$87(2)(b) s insults. Language which would ordinarily be inappropriate when dealing with civilians may be excused in the course of a violent confrontation. DCT Case 2017-17276 (BR16). However, officers may only use such language when a situation becomes so chaotic that their immediate need to maintain order overrides their duty to behave courteously and professionally. DCT Case 2017-17005 (BR17). § 87(2)(g) Allegation (O) Force: Police Officer Amanda Projetto used physical force against [87] Allegation (P) Discourtesy: Police Officer Amanda Proietto spoke discourteously to 887(2) Allegation (O) Abuse of Authority: Police Officer Amanda Projetto threatened [357(2)(b)] with the use of force. PO Proietto's BWC footage (BR03, beginning at approximately 03:10) shows PO Proietto holding onto §87(2)(b) s right shoulder as §87(2)(b) is cuffed and kneeling or sitting on the ground. \$87(2)(b) cries, screams hysterically, and claims that her arm is broken. \$87(2)(b) then screams at PO Projetto, "Your mother's a bitch, you fat whack bitch! You're a fucking ogre, bitch! Your mother's an ogre too!" § 87(2)(b) keeps yelling, and PO Proietto readjusts her grasp and moves her hand briefly to hold the back of se7(2)(b) s coat's hood, which is up over her head. PO Proietto tells \$87(2)(b) to relax, but \$87(2)(b) continues to scream and says that she cannot breathe. PO Projetto replies that she cannot breathe because she keeps screaming. At approximately 04:01, PO Proietto says, "Enough!" The BWC is largely obscured at this point, but the camera suddenly moves quickly as PO Proietto yells, "Fucking grab me one more time! Fucking grab me one more time and see what happens!" [\$87(2)(b) protests, "I didn't touch her, I didn't touch her,"

PO Weber's BWC footage provides an alternate view of this portion of the incident (BR04, beginning at approximately 03:50). It shows that PO Proietto was kneeling on significant side while PO Kselman was on significant side. The footage shows that PO Proietto abruptly shoved significant over into a prone position. PO Kselman's BWC footage provides a third view of

and PO Proietto replies, "No? You weren't just grabbing my leg?" By this time, the BWC's view is unobstructed again, and \$87(2)(b) appears to be lying flat on the ground. PO Proietto says to one

of the other officers, "Yeah, she got me with her nails in the leg."

this portion of the incident (BR02, beginning at approximately 03:55). PO Brochhausen's BWC footage (BR05) did not capture a view of \$87(2)(b) during this portion of the incident, but it did show that he later approached PO Proietto to ask if \$87(2)(b) had grabbed her, and PO Proietto answered affirmatively. did not allege that PO Proietto made this specific profane statement to her, and she did not allege this specific use of force; while she did allege that PO Proietto grabbed her hood and took her to the ground, she placed that allegation as occurring in a completely different context and prior to her being handcuffed. She provided little detailed testimony regarding anything which took place after she was handcuffed, other than that she screamed and that PO Weber sat on her stomach until the ambulance arrived. PO Proietto recounted that officers had to grab and hold \$87(2)(5) s legs because she started kicking while waiting for the ambulance. She confirmed that she held \$87(2)(b) shoulder. PO Proietto recounted that \$87(2)(b) grabbed her thigh and dug her nails into it. PO Proietto responded by telling \$87(2)(b) not to grab her, and \$87(2)(b) complied and stopped. PO Proietto could not recall if she used any physical force in response to \$87(2)(b) grabbing her. She also could not recall if she told \$87(2)(b) "Fucking grab me one more time and see what happens!" After watching the BWC footage, PO Projetto acknowledged that it did show her making the profane remark. She did not know what she meant by the phrase, "...and see what happens!" When asked if she shoved \$87(2)(b) in response to being grabbed, PO Proietto replied, "Probably to get her off me." PO Weber initially recounted that \$87(2)(b) kicked her legs while waiting for the ambulance, leading him to eventually kneel on her legs. He did not recall \$87(2)(b) ever trying to grab PO Proietto's leg, he did not recall hearing PO Proietto make the alleged remark, and he denied seeing PO Proietto shove \$87(2)(b) After viewing the BWC footage, PO Weber maintained that he did not recall this portion of the incident. He confirmed that he did not recall seeing \$87(2)(b) grab PO Proietto, though he clarified that he was not sure if he was looking at them at that exact moment. PO Kselman recounted holding \$87(2)(b) down as she screamed. He could not recall if any officer responded to \$87(2)(b) s remarks, and he provided no testimony about officers using force against \$87(2)(b) once she was cuffed. Watching the BWC footage did not refresh his recollection with regard to the use of force, and he did not recall \$87(2)(b) attempting to grab an officer. PO Brochhausen's BWC footage shows that he was on the phone with his supervisor and not watching \$87(2)(b) at the time. He reiterated this point in his testimony. He did not recount officers using additional force other than holding \$17(2)(b) down, and he did not recall any officer arguing when she was screaming. § 87(2)(g) Patrol Guide Procedure 221-01 states that officers may use force when it is reasonable to ensure the safety officers or civilians, or when it is reasonable to place a person in custody or prevent escape from custody (BR18). Any use of force must be reasonable under the circumstances. When appropriate and consistent with personal safety, officers should use de-escalation techniques to safely gain voluntary compliance to reduce or eliminate the necessity to use force. Officers are strictly

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forbidden from using "any level of force on handcuffed or otherwise restrained subjects unless

necessary to prevent injury, escape, or to overcome active physical resistance or assault."

§ 87(2)(g)

§ 87(2)(g)
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§ 87(2)(g)
Patrol Guide Procedure 200-02 states that the NYPD pledges to "respect the dignity of each individual and render our services with courtesy and civility" (BR19). Language which would ordinarily be inappropriate when dealing with civilians may be excused in the course of a violent confrontation. DCT Case 2017-17276 (BR16). However, officers may only use such language where a situation becomes so chaotic that their immediate need to maintain order overrides their duty to behave courteously and professionally. DCT Case 2017-17005 (BR17).
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§ 87(2)(g)
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Civilian and Officer CCRB Histories This is the first complaint to which \$87(2)(b) has been a party (BR20). PO Amanda Proietto has been a member of the NYPD for four years and this is the first CCRB complaint to which she has been a subject. She was also a subject in one complaint and three allegations regarding an incident which took place after this incident. None of those allegations wa substantiated. PO Kevin Weber has been a member of the NYPD for 11 years and has been a subject in eight CCRB complaints and 13 allegations, none of which was substantiated. He is also a subject in two complaints and six allegations stemming from incidents which took place after this incident. The investigations of those complaints are ongoing.
PO Robert Kselman has been a member of the NYPD for nine years and has been a subject in two CCRB complaints and three allegations, none of which was substantiated. §87(2)(9)
PO Jason Brochhausen has been a member of the NYPD for ten years and has been a subject in five CCRB complaints and six allegations, none of which was substantiated. He is also a subject in two complaints and three allegation stemming from incidents which took place after this incident. The investigation in that case is ongoing. [857(2)(9)]

Mediation, Civil and Criminal Histories

- This case was not suitable for mediation.
- As of March 16, 2020, the New York City Office of the Comptroller had no record of a Notice of Claim being filed regarding this complaint.
- [§ 87(2)(b)] [§§ 86(1)(3)&(4)] [§ 87(2)(c)]

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Squad No.:	5		
Investigator:	Stephen J. DiFiore Signature	Inv. Stephen DiFiore Print Title & Name	March 11, 2021 Date
Squad Leader:	Daniel Giansante Signature	IM Daniel Giansante Print Title & Name	March 11, 2021 Date
Reviewer:	Signature	Print Title & Name	Date